

**CALENDAR ITEM
C64**

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06/28/16

PRC 7412.1

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G. Kato

TERMINATION OF A GENERAL PERMIT – PROTECTIVE STRUCTURE

PERMITTEE:

The Owner Parties to the Las Tunas Beach Settlement Agreement No. 2

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, Las Tunas Beach, Malibu, Los Angeles County.

AUTHORIZED USE:

Groin construction and maintenance for beach erosion control, including the removal or remedying of the existing hazard created by the existing groins.

LEASE TERM:

49 years, beginning October 31, 1990.

CONSIDERATION:

\$10 per year.

BACKGROUND:

In 1929, prior to the formation of the State Lands Commission in 1938 and its requirements for leases for the use of State tide and submerged lands, a series of eight steel and concrete groins were constructed along Las Tunas Beach in Malibu. Litigation over the placement of and responsibility for these groins was resolved in 1931 by legislation that provided a permitting process for these and similar groins. Pursuant to this permitting process, permits for the Las Tunas groins were issued by the State to Title Insurance and Trust Company, the owner of tracts along the beach. Although the permits required the groins to be maintained and repaired, the groins were allowed to deteriorate. The deteriorated remnants constituted a very serious hazard to users of the beach.

In 1982, the Attorney General, acting on behalf of the people and the State Lands Commission, brought suit in Los Angeles County Superior Court against Title Insurance and Trust Company (now Ticor) seeking removal of the groins. Ticor claimed that the beachfront property owners were responsible for the

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groins. The property owners denied responsibility and claimed that Ticor and the State would be responsible for damage to their property if the groins were removed and not replaced. Numerous suits and counter suits concerning the issues were consolidated into one single action. The court directed a settlement of this complex litigation. The first settlement agreement was entered into by the State, Ticor, and some of the affected property owners. The settlement failed because many of the conditions were not met during the prescribed escrow period. The court continued to direct the negotiation of the parties which led to the Las Tunas Beach Settlement Agreement No. 2 (Agreement).

The Agreement was approved by the Commission and became effective on August 2, 1989. The parties to the Agreement are the State, Ticor, and about 75 percent of the Las Tunas Beach homeowners (referred to in the Agreement as the Owner Parties). The remaining 25 percent of the beachfront homeowners, for various reasons, did not sign the Agreement. Unanimity was not required for the Agreement to be effective and for escrow to close.

Pursuant to the Agreement, the Commission was required to consider a lease to the Owner Parties for the construction of as many as eight new groins. The requirement for consideration and issuance of the permit was to be met within one year from the effective date of the Agreement unless extended by the court for an additional 90 days upon a showing of good cause. In August 1990, the Court granted the parties' request for an extension. The Owner Parties, pursuant to the terms of the Agreement, applied to the Commission for a 49-year general permit for eight separate parcels of tide and submerged lands at Las Tunas Beach in Malibu for the purpose of constructing eight rock groins. The new groins, as proposed, were to be constructed on or near the sites of the old groins. On October 29, 1990, the Commission authorized the issuance of a General Permit – Protective Structure Use to the Owner Parties to the Las Tunas Beach Settlement Agreement No. 2, through their agent.

The Agreement also required the Owner Parties to form a geologic hazard abatement district (GHAD) to remain in place for maintaining the new groins. The Agreement anticipated that the groin work would be completed within two years and ninety days of the Agreement becoming effective and noted that the Commission could take action to remove any new groins if the GHAD ever dissolved. The Permittee then formed a GHAD and the existing groins were removed. However, new groins were never constructed on the leased premises. Commission staff has become aware that the GHAD has been dissolved.

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The permit requires the Permittee to continuously use the premises for the intended purposes. If the Permittee fails to use the premises for more than 90 days, it is conclusively deemed abandonment. The designated use of the premises is "Groin Construction and Maintenance for Beach Erosion Control." Since new groins were never constructed, the Permittee has not been using the premises for the intended purpose for a period of more than 90 days. Staff concludes the Permittee has abandoned the property pursuant to the terms of the permit. Abandonment of the premises is an event of default. For the reasons stated above, staff recommends the termination of the permit.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and the State's Best Interests Analysis:

The recommended permit termination will not substantially interfere with public trust needs at this time and at this location. The remnant groins constituting a public safety hazard have been removed and are no longer a risk to public safety. The proposed groins were never constructed.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest level of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. The last payment for rent occurred on February 7, 2000. The Permittee prepaid 10 years in advance. Invoices were sent to the Permittee on a yearly basis starting October 2009. There is currently an outstanding balance due of \$70, not including penalty and interest. Staff recommends waiving the back rent, including any penalty or interest as the improvements were never constructed.
3. The permit termination is not a project as defined by the California Environment Quality Act, because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

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EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed termination of Lease No. PRC 7412.1 will not substantially interfere with the public trust needs and values at this location; find that this action is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

1. Waive any and all back rent and any penalty or interest that may have accrued.
2. Authorize termination of Lease No. PRC 7412.1, a General Permit – Protective Structure Use, approved by the Commission on October 29, 1990, to The Owner Parties to the Las Tunas Beach Settlement Agreement No. 2.

EXHIBIT A

PRC 7412

LAND DESCRIPTION

Eight parcels of tide and submerged land in Santa Monica Bay, Los Angeles County, California, adjacent to Lots 3 through 89 as shown on map filed March 25, 1929, in Book 26, pages 43 and 44, of Record of Surveys in the County Records Office of said County and adjacent to another parcel of land bounded on the east by a line parallel with and 50 feet easterly of the westerly line of Rancho Boca De Santa Monica, on the north by West Topanga Beach Road, on the west by the east line Lot 89 of said Record of Survey and on the south by said Bay, all groins are described as shown on the Preliminary Map of "Las Tunas Beach Geological Hazard Abatement District, Groins and Beachfill", Dated 10/2/90, Job No 2800, by Moffatt and Nichol, Engineers on file in file W 24429 in the California State Lands Commission office in Sacramento, California, said parcels are more particularly described as follows:

PARCEL 1 - Groin #1

A strip of tide and submerged land 68 feet wide located waterward of Lots 9, 10, 11 & 12 as shown on said Record of Survey Map and lying 34 feet on each side of the following described centerline:

COMMENCING at the northeast corner of said Lot 11; thence southerly along the east line of said Lot 11, 15 feet more or less; thence S 3° 10' E, 10 feet to the POINT OF BEGINNING; thence continuing S 3° 10' E, 215 feet to the end of the herein described centerline.

PARCEL 2 - Groin #2

A strip of tide and submerged land 86 feet wide located waterward of Lots 25, 26, 27 & 28 as shown on last said map and lying 43 feet on each side of the following described centerline:

COMMENCING at a point on the northerly line of Lot 26, 1 foot westerly of the northeast corner of said Lot 26; thence S 8° 20' W, 28 feet more or less to the POINT OF BEGINNING; thence continuing S 8° 20' W, 260 feet to the end of the herein described centerline.

PARCEL 3 - Groin #3

A strip of tide and submerged land 76 feet wide located waterward of Lots 39, 40 & 41 as shown on last said map and lying 38 feet on each side of the following described centerline:

COMMENCING at a point on the northerly line of said Lot 40, 1 foot westerly of the northeast corner of said Lot 40; thence S 00° 50' E, 67 feet more or less to the POINT OF BEGINNING; thence continuing S 00° 50' E, 227 feet to the end of the herein described centerline.

PARCEL 4 - Groin #4

A strip of tide and submerged land 94 feet wide located waterward of Lots 46, 47, 48 & 49 as shown on last said map and lying 47 feet on each side of the following described centerline:

COMMENCING at a point on the east line of Lot 47, south 44 feet from the northeast corner of said Lot 47; thence S 10° W, 15 feet more or less to the POINT OF BEGINNING; thence continuing S 10° W, 240 feet to the end of the herein described centerline.

PARCEL 5 - Groin #5

A strip of tide and submerged land 82 feet wide located waterward of Lots 62, 63, & 64 as shown on last said map and lying 41 feet on each side of the following described centerline:

COMMENCING at the northeast corner of said Lot 63; thence S 17° 30' W, 10 feet more or less to the POINT OF BEGINNING; thence continuing S 17° 30' W, 290 feet to the end of the herein described centerline.

PARCEL 6 - Groin #6

A strip of tide and submerged land 80 feet wide located waterward of Lots 74, 75, 76 & 77 as shown on last said map and lying 40 feet on each side of the following described centerline:
BEGINNING at a point on the east line of said Lot 75, southerly 78 feet from the northeast corner of said Lot; thence continuing southerly along said line and its prolongation, 300 feet to the end of the herein described centerline.

PARCEL 7 - Groin #7

A strip of tide and submerged land 74 feet wide located near the east line of Lot 89 as shown on last said map and lying 36 feet westerly and 38 feet easterly of the following described line:
BEGINNING AT A POINT on the easterly line of said Lot 89, southerly 88 feet from the northeasterly corner of Lot 89; thence continuing southerly along said easterly line and its prolongation, 265 feet to the end of the herein described line.

PARCEL 8 - Groin #8

A strip of tide and submerged land 70 feet wide in the vicinity of the westerly line of said Rancho and lying 35 feet on each side of the following described centerline:
BEGINNING AT A POINT on the westerly line of said Rancho, southerly 227 feet from its intersection with the southerly right of way line of Pacific Coast Highway; thence continuing southerly along said westerly line and its prolongation 120 feet; thence S 14 30 W, 160 feet to the end of the herein described line.

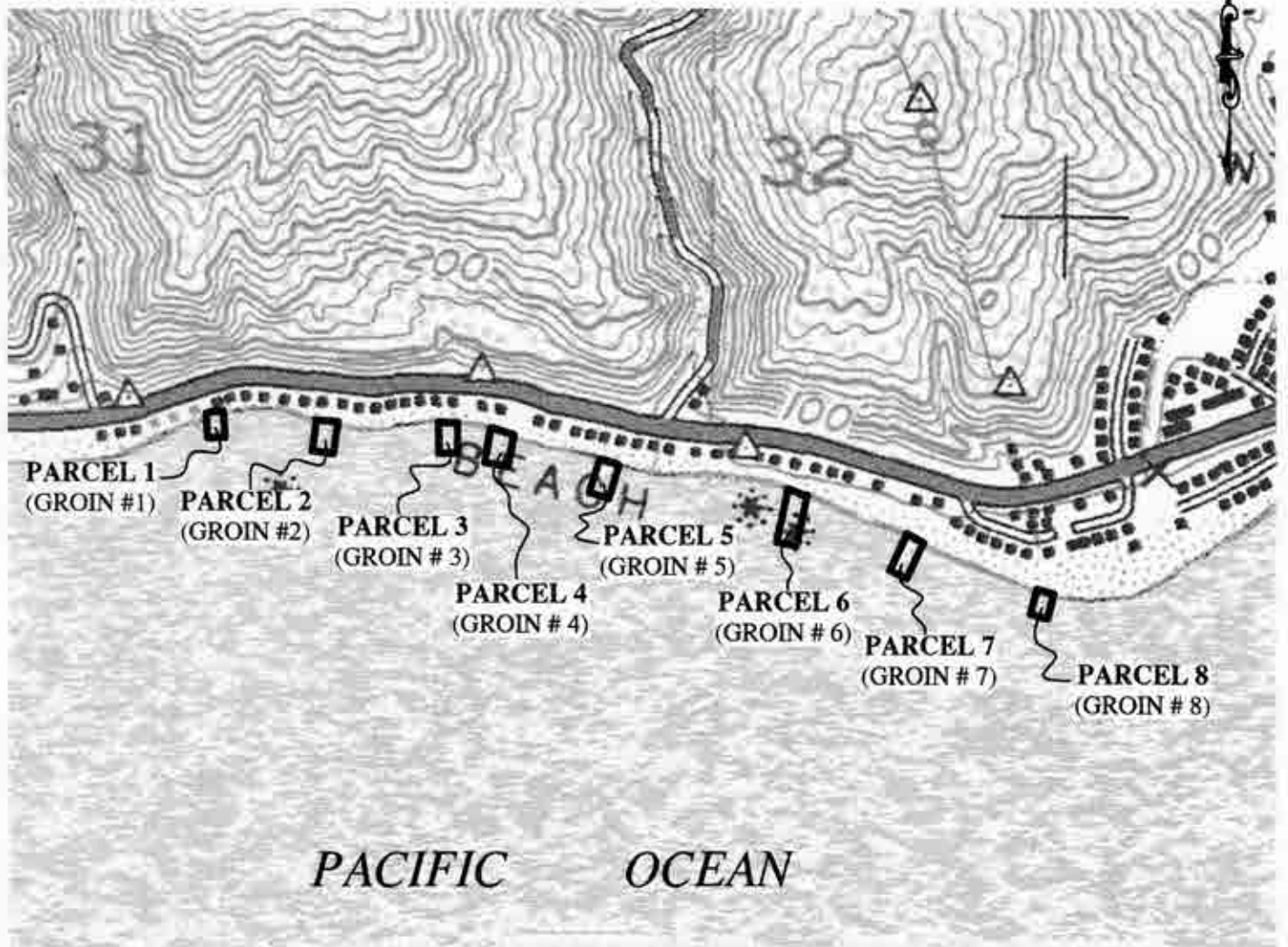
EXCEPTING from said parcels numbered 1 through 8 any portion lying landward of the ordinary high water mark.

END OF DESCRIPTION

PREPARED OCTOBER 22, 1990 BY LLB.

NO SCALE

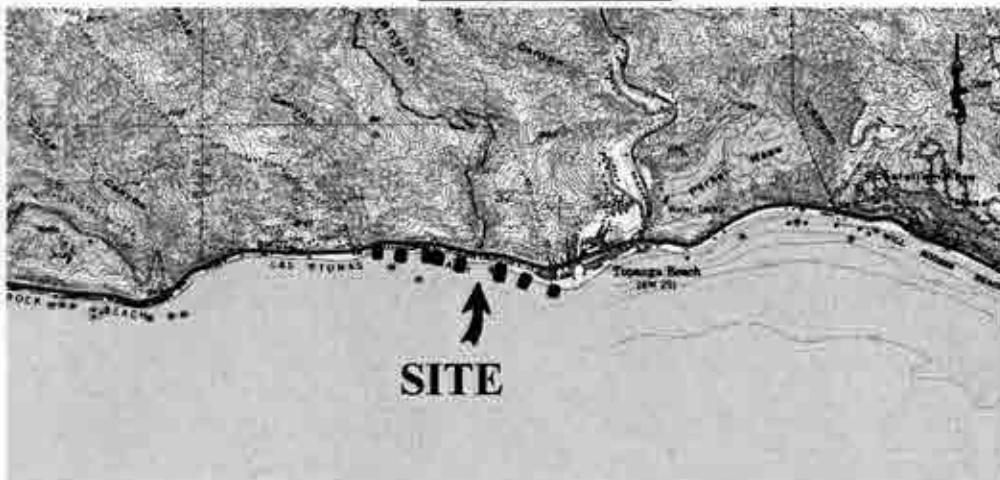
SITE



LAS TUNAS BEACH, MALIBU

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 7412

THE OWNER PARTIES TO THE
LAS TUNAS BEACH
SETTLEMENT
AGREEMENT NO.2
TERMINATION OF LEASE
LOS ANGELES COUNTY



TS 05/13/16